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BEFORE THE SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 677 (Sub-No. 1)

**COMMON CARRIER OBLIGATION OF RAILROADS –
TRANSPORTATION OF HAZARDOUS MATERIALS**

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MOTION OF AMERICAN CHEMISTRY COUNCIL TO EXTEND SCHEDULE

In STB Ex Parte No. 677, the Surface Transportation Board (Board) held a public hearing to examine various aspects of the railroad common carrier obligation (CCO). The American Chemistry Council (ACC) participated in that hearing

On June 4, 2008, the Board announced that STB Ex Parte No. 677 (Sub-No. 1) will focus on the CCO in relation to the transportation of hazardous materials (hazmat) by rail. Written testimony and notices of intent to participate are due by July 2. The Board's public hearing on this sub-docket is scheduled for July 16.

ACC will file a notice of intent to participate in this important proceeding. As shippers of a wide array of hazmat by rail – including toxic inhalation hazard (TIH) products – ACC member companies have a significant interest in the rail CCO. But it will be essentially impossible to conduct the necessary research and to review policy positions with member companies under the schedule issued in the June 4 notice.

In addition, ACC notes that it is difficult to know whether the Board means to deal exclusively with TIH products or to examine the CCO with respect to all hazmat. "TIH" and "hazmat" are certainly not equivalent categories in the context of the issues that the Board has inquired about. Moreover, many non-TIH hazmat shippers and their industry organizations would certainly benefit from the Board's clarifying the intended scope of this sub-docket.

By this motion, ACC respectfully requests that the Board modify its schedule by adding approximately 60 days for the preparation of written testimony, with the hearing to follow on an appropriate day. Several parties have recently filed similar motions. ACC concurs with their views, including the observation that there is no statutory or regulatory requirement for the schedule set forth in the June 4 notice.

* The Fertilizer Institute (June 11), National Industrial Transportation League (June 12), Dow Chemical Company (June 12), Chlorine Institute, Inc. (June 12), and Edison Electric Institute (motion filed June 5, as modified by letter submitted June 16)

The Board has asked potential parties and their prospective witnesses to address a range of complex legal, economic and policy matters, including

- hazmat safety,
- carrier liability,
- potential policy and legislative "solutions" on liability;
- what is "a reasonable request" for TIH (but apparently not all hazmat) service,
- costs "associated with" rail carriage of hazmat (apparently not limited to TIH),
- how carriers "recover those" costs; and
- hazmat transportation initiatives by other federal agencies

Among the on-going activities of other agencies is a significant rulemaking that specifically addresses TIH rail tank car safety. That docket (FRA-2006-25169) is being conducted by the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA). As has been noted in comments during a series of public meetings on that proposed regulations, there is an urgent need for an interim federal regulation that would allow shippers to lease or purchase TIH tank cars while the primary rulemaking proceeds. ACC and its members are working intensively with others – including rail carriers – to develop a single petition that will be submitted jointly to FRA and PHMSA. Such efforts illustrate how industries can work cooperatively to address important issues.

In conclusion, ACC strongly supports the other pending requests for an extension of the procedural schedule in this docket by approximately 60 days in order to provide sufficient time for all parties to develop information and review options. To rush the parties to a hearing would, as noted by the Chlorine Institute, "not have the result of causing dialogue . . . [but instead would be] much more likely to cause the parties to harden their respective positions." The Board can facilitate dialogue on the CCO by granting the requested extension. Moreover, ACC believes that it is important for the public to understand clearly whether this sub-docket applies exclusively to TIH shipments or encompasses all railroad hazmat service.

Respectfully submitted



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